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## EU REGULATORY

### Google not liable for Autocomplete and Related Searches results, Italian court rules

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On 25 March 2013 the Court of Milan found Google not liable for defamation in respect of the results generated by its Autocomplete and Related Searches functions, which brought up words that the plaintiffs deemed to be defamatory in connection with their names.

The Court of Milan's decision is remarkable since it takes a completely different approach to the issue of search engine liability than a 2011 ruling by the same Court, which found Google liable for defamation because its Autocomplete suggestions paired the plaintiff's name with defamatory keywords.

#### Facts

The plaintiffs (two non-profit associations and their president) brought proceedings before the Court of Milan alleging that Google's Autocomplete and Related Searches results included words like 'scam', 'sect' and 'plagiarism', which the plaintiffs deemed defamatory.

According to the complaint, Google complied only partially with the request raised by the plaintiffs to remove the allegedly libellous associations. In particular, the plaintiffs argued that:

- Google acts as content provider since the Autocomplete and Related Searches tools have been developed by Google and are thus under its control.
- Even if Google were defined as a caching or hosting provider, Sections 15 and 16 of the E-commerce Decree (Legislative Decree No 70/2003), which implemented E-commerce Directive No 2000/31/EC, would provide proper legal grounds to order Google to remove defamatory content on an urgent basis.

#### The Court of Milan's injunction

The Court of Milan dismissed the complaint and held that Google could not be considered a content provider, but rather a 'caching provider' which, pursuant to the definition set out in Section 15 of the E-commerce Decree, makes 'more efficient information's onward transmission to other recipients of the service upon their request'.

Indeed, according to the court, Google's search interface is not defined as content, but instead as a means of activation of the service. Likewise, Google's Autocomplete and Related Searches tools are functionalities of the Google search engine: the Autocomplete tool merely statistically reproduces the results of the most frequent searches made by users, while the Related Searches tool reproduces the results of Web pages indexed and made accessible by Google based on users' search terms.

In addition, the court noted that, based on the Google search engine's technical means of operation, "the terms displayed to users on the search bar when using the Autocomplete function, or within the Related Searches at the bottom of the search page, are not an archive, nor are they structured, organised or influenced by Google, which only analyses their popularity and displays them based on an algorithm via automated software."

Further, the court observed that, whilst Internet service providers have no general obligation to monitor information over the Internet or implement preventive measures (e.g. filtering), they have a duty to remove illicit content if so required by a specific order from the competent judicial authority. In this case, a provider may be considered liable only in the event of non-compliance with such an order (Sections 14, 15 and 16 of the E-commerce Decree).

This principle has been recently highlighted by the Court of Florence, which identified Google as a 'caching provider' and held that it could be obliged to remove content from its search results only upon a specific court order and not merely upon the notice of a party (Court of Florence, injunction of 25 May 2012).

In the specific case under discussion in this article, the Court of Milan noted that Google had not carried out an infringement that could justify a similar removal order under the E-commerce Decree since the suggestions in question were not defamatory statements.

Indeed, on the one hand, these suggestions do not form a substantial statement nor do they represent 'what Google thinks'. Rather, they are the outcome of users' most frequent queries or, as regards the Related Searches tool, the display of the most frequent terms contained in the Web pages within the search results. On the other hand, they are the results of completely automated searches made by an algorithm. Therefore, according to the court, the automatic association generated by the algorithms used by Google is not a statement but merely a search suggestion based on statistical or indexed data.

In addition, the average Internet user is well aware that Google's search results are suggestions determined by an algorithm and not statements made by Google.

The ruling at hand is consistent with an injunction of the Court of Pinerolo issued in April 2012, which held that Google's suggestion of the words 'arrested' and 'under investigation' when a user typed the name of the plaintiff into the Google search bar did not result in defamation based on reasoning similar to that outlined above.

The ruling is also in line with other decisions in similar cases handed down by foreign Courts, which were expressly referred to by the Court of Milan's ruling (e.g., among others, the Swiss Jura Cantonal Court decision of 12 February 2011).

On the other hand, in 2011 the Court of Milan reached the opposite conclusion when it found Google liable for defamation resulting from the association of the plaintiff's name with the words 'fraud' and 'fraudster'. In that case, the court opined that even if Google were to be considered a 'hosting provider' within the meaning of the E-commerce Decree, the Decree would not determine the case, as it applies only to the storage of information provided by third parties. The court held that the defamatory association was exclusively the result of the software created by Google (Court of Milan, injunction of 24 March 2011).

## Conclusions

The Court of Milan's ruling is expected to shed more light on the debated issue of search engines' liability for search suggestions including negative words.

The decision at hand will surely constitute a benchmark in Italian case law given the authority of the Court of Milan in ISP-related issues, and it gives hope for more consistency in future rulings by the Italian courts on the matter.

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